



TTAB

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October 18, 2005

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Our File: 2778-157

Trademark Trial and Appeal Board
United States Patent & Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

*Re: American Italian Pasta Company v. Barilla .G.E.R. Fratelli-Societa Per Azioni
Opposition No. 91161373*

Dear Sir:

We enclose for filing with the Trademark Trial and Appeal Board Barilla's
Answer to Amended Notice of Opposition.

No fee is believed necessary. The Commissioner for Trademarks is hereby
authorized to draw on the deposit account of Rothwell, Figg, Ernst & Manbeck, Account
No. 02-2135, if a fee is deemed necessary.

Please call if there are any questions.

Very truly yours,

Carla C. Calcagno;

CCC/jea
Enclosure



10-18-2005

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of Serial No. 78/136,703

Filed: June 18, 2002

Mark: BARILLA - AMERICA'S FAVORITE PASTA

AMERICAN ITALIAN PASTA CO.)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91161373
)	
BARILLA G. E R. FRATELLI -)	
SOCIETÀ PER AZIONI)	
)	
Applicant.)	

ANSWER TO AMENDED NOTICE OF OPPOSITION

Barilla G. E R. Fratelli - Società Per Azioni (hereinafter "Barilla") answers the Notice of Opposition in accordance with the paragraphs of allegation therein.

1. Insufficient information.¹
2. Barilla has changed its name to Barilla G. E R. Fratelli - Società Per Azioni, with an address at Viale Riccardo e Pietro Barilla 3/A Parma, Italy; otherwise, admitted.
3. Insufficient information.
4. Insufficient information except admitted that Application Serial Nos. 76/497,489 and 76/497,190 recite the goods as "pasta" and an alleged date of use prior to the filing date of the opposed application.
5. Insufficient information.
6. Insufficient information.

¹Insufficient information as pleaded herein is shorthand for pleading that applicant is without sufficient knowledge or information with which to form a belief and leaves opposer to its proofs.

7. Admitted to the extent that Barilla filed on June 18, 2002 an application under intent-to-use for the mark BARILLA - AMERICA'S FAVORITE PASTA for "pasta, pasta products, sauces for pasta," in Class 30- and said application was assigned Ser. No. 78/136,703; otherwise denied.

8. Admitted.

9. Admitted to the extent that the file history of the recited application 76/497,489 purports to indicate that the Examining Attorney may cite the opposed application; otherwise, denied.

10. Admitted to the extent that Barilla is the owner by virtue of assignment of U.S. Registration No. 2,005,752; otherwise, denied.

11. Denied.

12. Insufficient information.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. The allegation is a prayer for relief and requires no response.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Opposer has conceded that AMERICA'S FAVORITE PASTA is not inherently distinctive in connection with its pasta products and the alleged mark is not inherently distinctive.

Second Affirmative Defense

Opposer's alleged AMERICA'S FAVORITE PASTA mark lacks acquired distinctiveness and/or is incapable of acquiring distinctiveness, and the opposition thereby fails to state a claim upon which relief can be granted.

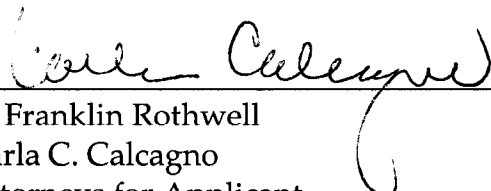
Third Affirmative Defense

The alleged trademark AMERICA'S FAVORITE PASTA is deceptively misdescriptive of Opposer's goods, which lack the requisite market share to support such claim.

WHEREFORE, Barilla prays that the opposition be dismissed with prejudice.

Respectfully submitted,

By



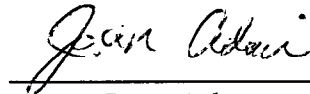
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answer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER TO AMENDED NOTICE OF OPPOSITION** was served on October 18, 2005, by first-class mail, postage prepaid, on counsel for Opposer:

Thomas H. Van Hoozer, Esq.
Hovey Williams LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108



Joan Adair

answer